

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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Halperin

FILE:

B-216648

DATE: November 8, 1984**MATTER OF:**

Northwest Recovery Systems, Inc.

DIGEST:

1. Evidence submitted does not support allegations of collusive or noncompetitive bidding in violation of the Certification of Independent Price Determination. If protester has additional, specific information, it should be presented to the contracting officer for possible forwarding to the Department of Justice in accordance with the Federal Acquisition Regulation.
2. No basis exists to preclude a contract award merely because bidders may have submitted below-cost bids. A below-cost bid presents a question of the bidder's responsibility and GAO does not review affirmative determinations of responsibility except in limited circumstances.
3. Where solicitation does not require bidder to have a specific license, allegation that low bidder does not possess the necessary state operating authority to permit it to perform the trash collection services required by the solicitation does not affect the eligibility of the low bidder for award; rather, it raises a matter to be settled between the contractor and state authorities, not federal officials.
4. Protest concerning bidder's qualification as a small business concern is not for review by GAO since it is a matter for decision by the Small Business Administration.

Northwest Recovery Systems, Inc. (Northwest), protests an award to any other bidder under invitation for bids No. 505-10-85, a small business set-aside, issued by the Veterans Administration Medical Center at American Lake

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in Tacoma, Washington, for trash collection and removal. Northwest alleges that the two other bidders which bid lower prices than Northwest may have engaged in noncompetitive, collusive bidding practices. Northwest questions whether Evergreen State Refuse (Evergreen), the low bidder, can perform the contract requirements at the price it bid. Northwest also alleges that Evergreen lacks state operating authority necessary to perform the required hauling. Further, Northwest contends that Lakewood Refuse Service, the second-low bidder, is not a small business. Finally, Northwest requests that GAO investigate the contracting practices of these companies.

We dismiss the protest in part and deny it in part.

Northwest argues that the pattern of bidding for this trash removal work over the years, combined with the bids submitted this year suggests illegal, noncompetitive bidding practices which violate the solicitation's Certification of Independent Price Determination. Northwest complains that in the past the VA was overcharged by certain firms and now that Northwest is bidding for the contract, those firms are bidding too low apparently in collusion.

To support the above contention, Northwest has submitted the abstract for bids for this year's procurement and for 1983. The abstract for 1983 shows that Northwest and Lakewood submitted bids and Northwest was low. The abstract for this procurement shows bids by Evergreen, Lakewood and Northwest, with Evergreen being low. No other evidence has been submitted to support Northwest's charge. We fail to see how this evidence by itself proves collusive bidding and, therefore, deny this aspect of the protest. However, if Northwest has specific evidence of criminal conduct, it should be presented to the contracting officer for possible forwarding to the Department of Justice in accord with Federal Acquisition Regulation § 3.303, 48 Fed. Reg. 42,102, 42,110 (1983) (to be codified at 48 C.F.R. § 3.303). See Medi Coach Inc., B-214034, May 2, 1984, 84-1 C.P.D. ¶ 501.

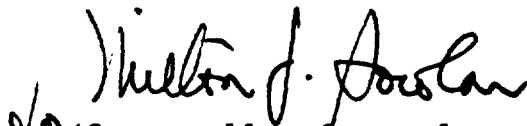
We will not consider the merits of Northwest's position questioning Evergreen's ability to perform the work at the price it bid. The submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible prospective contractor. TECOM Incorporated, B-215291, June 19, 1984, 84-1 C.P.D. ¶ 644. Whether the low bidder can perform the contract at the price bid is a matter of responsibility. Our

Office does not review protests concerning affirmative determinations of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met. TECOM Incorporated, B-215291, supra. Neither exception is alleged here.

We similarly will not consider Northwest's allegation that Evergreen lacks state operating authority. Compliance with applicable state and local licensing requirements is generally a matter to be settled between state or local authorities and contractors, not federal officials. See G.I. Moving & Storage, B-212969, Oct. 3, 1983, 83-2 C.P.D. ¶ 408. We have held that the requirement for operating authority is properly a matter of responsibility which we will not consider absent conditions not present here. Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 C.P.D. ¶ 565.

Northwest's final contention, that the second low bidder is not a small business, is also not for our consideration. Since the second low bidder is not in line for award, its status as a small business is academic. In any event, under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for federal procurement purposes. Therefore, our Office does not consider size status protests. Tennier Industries, Inc., B-215150, May 23, 1984, 84-1 C.P.D. ¶ 566.

The protest is dismissed in part and denied in part.


for Comptroller General
of the United States